

Filed for intro on 02/02/95  
House Bill \_\_\_\_\_  
By \_\_\_\_\_

Senate No. SB0840  
By Crutchfield

AN ACT to amend Tennessee Code Annotated, Title 7, Chapter 57, to also grant certain powers heretofore granted hospital authorities created under the Metropolitan Hospital Authorities Act to hospital authorities which were heretofore created by Private Act of the General Assembly of Tennessee, and to establish other powers, authorizations, and privileges for the operation of hospital authorities covered by this Act, and to amend the statutory requirements under Title 8, Chapter 44, and Title 10, Chapter 7, Tennessee Code Annotated, with regard to the conducting of meetings and public inspection of documents of hospital authorities covered by this Act; and to amend the bidding requirements for certain hospital authorities covered by this Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Purpose and Policy.

(A) The public purpose and policy set forth in Section 7-57-102(A) is also declared to be applicable to any hospital authority created by Private Act of the General Assembly (sometimes referred to in this Act as a "Private Act Metropolitan Hospital Authority") the principal hospital facilities of which are located in a county in this State with a population exceeding 250,000 according to the official United States census of 1990 or any subsequent official census.

(B) The General Assembly hereby finds that the demand for hospital, medical and health care services is rapidly changing as is the way and manner in which such services are purchased and delivered; that the market for hospital and health care services is becoming increasingly competitive; and that the hospital and other health care providers need flexibility to be able to respond to changing conditions by having the power to develop efficient and cost-effective methods to provide for hospital, medical and health care needs. The General Assembly also finds that the increasing competition and changing conditions forces hospitals and other health care providers to develop market strategies and strategic plans to effectively compete. The General Assembly further finds that public hospitals in metropolitan areas are presently at a competitive disadvantage, and that significant investments in the public assets of Private Act Metropolitan Hospital Authorities could be jeopardized by inability to compete with private hospitals because of legal constraints upon the scope of their operations and limitations upon the power granted to public hospitals under existing law.

Section 2. Powers Granted.

(A) In addition to the powers granted to it by any Private Act of the General Assembly,<sup>1</sup> a Private Act Metropolitan Hospital Authority shall have as supplemental and additional powers, all those powers of a Hospital Authority granted in:

(i) Tennessee Code Annotated Section 7-57-301, provided that no provision of said section pertaining to the relationship of a participating municipality to the operations of a Metropolitan Hospital Authority shall limit or reduce any power that is granted to a Private Act Metropolitan Hospital Authority by a Private Act of the General Assembly;

(ii) Tennessee Code Annotated Section 7-57-302;

(iii) Tennessee Code Annotated Section 7-57-304;

(iv) Tennessee Code Annotated Section 7-57-305; and

(v) Tennessee Code Annotated Section 7-57-310.

(B) In addition to powers otherwise granted by this Act or any other Public or Private Act of this State, or by any State regulation or federal law or regulation, and to the extent at the time not prohibited by the Constitution of Tennessee, a Private Act Metropolitan Hospital Authority shall have, together with all power<sup>6</sup> incidental there to or necessary to discharge the powers granted specifically herein, the following powers:

(I) To participate as a shareholder in a corporation, as a joint venturer in a joint venture, as a general partner in a general partnership, as a limited partner in a limited partnership or a general partnership, as a member in a nonprofit corporation or as a member of any other lawful form of business organization, which provided hospital, medical or health care or engages in any activity supporting or related to the exercise of any power granted to a Private Act metropolitan Hospital Authority;

(ii) To make or arrange for loans, contributions to capital and other debt and equity financing for the activities of any corporation of which such authority is the sole shareholder or sole member, and to guarantee loans and any other obligations for such purposes;

(iii) To elect all or any of the members of the board of directors of any nonprofit corporation of which the Private Act Metropolitan Hospital Authority is a member and has the power to so elect under the nonprofit corporation charter and bylaws;

(iv) To create, establish, acquire, operate or support subsidiaries and affiliates, either for profit or nonprofit, to assist such Private Act Metropolitan Hospital Authority in fulfilling its purposes;

(v) To create, establish or support nonaffiliated for **profit or** nonprofit corporations or other lawful business organizations which operate and have as their purposes the furtherance of such Private Act Metropolitan Hospital Authority's purposes;

(vi) Without limiting the generality of the preceding subdivisions (iv) and (v), to accomplish and facilitate the creation, establishment, acquisition, operation or support of any such subsidiary, affiliate, nonaffiliated corporation or other lawful business organization, by

means of loans of funds, acquisition or transfer of assets, leases of real or personal property, gifts and grants of funds or guarantees of indebtedness of such subsidiaries, affiliates and non-affiliated corporations;

(vii) To indemnify any person (including for purposes of this subdivision such person's estate and personal representatives) made or threatened to be made a party to any action or proceeding, whether civil or criminal, by reason of the fact that he or she is or was a board member or officer of such Private Act Metropolitan Hospital Authority, or by reason of the fact that he or she serves or served any other corporation or other entity or organization (whether for profit or not for profit) in any capacity at the request of the Private Act Metropolitan Hospital Authority, against all judgments, fines, amounts paid in settlement and reasonable expenses (including, without limitation, attorneys' fees actually and necessarily incurred) as a result of any such action or proceeding, or any appeal therein; provided, however, that nothing herein shall be construed as permitting indemnification of any person:

(a) In connection with any malpractice action or proceeding arising out of or in any way connected with such person's practice of his or her profession;

(b) In connection with an action or proceeding by such Private Act Metropolitan Hospital Authority in which a person is adjudged liable to such Private Act Metropolitan Hospital Authority; or

(c) In connection with any other action or proceeding in which such person is adjudged liable on the basis that personal benefit was improperly received by such person.

(viii) To make any other indemnification now or hereafter authorized by law; and

(ix) To exercise in any other county either within or **without** this State any power that may be exercised in the county in which the Private Act Metropolitan Hospital Authority's principal hospital, medical and health care facilities and programs are located, notwithstanding any other statute to the contrary, whenever in the judgment of its board of Trustees the operation of the hospital authority's hospital, medical and health care or program facilities, or the

quality of medical or health care for its citizens in the county of its principal hospital operations will be enhanced through economic interest in or contractual arrangements with hospital, medical and health care facilities or programs located outside said county.

(x) To have and exercise all powers necessary or convenient to effect any or all the purposes for which a Private Act Metropolitan Hospital Authority is organized.

(C) In the exercise of its powers, including, without limitation, the powers in Section 2 hereof, any other provision of this Act and of any other law a Private Act Metropolitan Hospital Authority may acquire, manage, lease, purchase, sell, contract for or otherwise participate solely or with others in the ownership or operation of hospital, medical or health program properties and facilities and properties, facilities, and programs supporting or relating there to of any kind and nature whatsoever and in any form of ownership whenever the Board of Trustees in its discretion shall determine it is consistent with the purposes and policies of this Act or any Private Act applicable to it, and may exercise such powers regardless of the competitive consequences thereof.

### SECTION 3. Market Strategies and Strategic Planning.

(A) In addition to powers and duties otherwise provided and notwithstanding any law to the contrary, a Private Act Metropolitan Hospital Authority may develop marketing strategies for its existing hospital, medical and health care services and programs or any hospital, medical and health care service or program to be provided in the future and may develop strategic plans for the development of any future hospital, medical and health care service or facility or programs.

(B) Notwithstanding the provisions of Title 8, Chapter 44, Tennessee Code Annotated or of any other law to the contrary, a Private Act Metropolitan Hospital Authority may hold an executive session in private **for** the discussion and development of market strategies and strategic plans described in Section 3 (A) of this Act.

(C) Notwithstanding the provisions of Title 10, Chapter 7, Tennessee Code Annotated or of any other law to the contrary, any marketing strategy and strategic plan described in Section 3 (A) of thin Act of a Private Act Metropolitan Hospital Authority or of a facility or program owned or operated by a Private Act Metropolitan Hospital Authority shall not be public record and shall be confidential but shall be subject to court subpoena to the extent relevant and admissible as evidence in any judicial proceeding.

(D) At such time the market strategies and strategic plans are to be presented to the Board of Trustees of the Private Act Metropolitan Hospital Authority for approval and implementation, the deliberation and consideration for formal approval thereof shall be conducted in compliance with the provisions of Title 8, Chapter 44, Tennessee Code Annotated, and such documents pertaining to such portion of the market strategies and strategic planning as are approved for implementation shall be subject to the provisions of Title 10, Chapter 7, Tennessee Code Annotated.

#### SECTION 4. Bidding.

(A) Any provision of a Private Act of the General Assembly to the contrary notwithstanding, a Private Act Metropolitan Hospital Authority shall not be required **to** bid the purchase or procurement of any goods or services that:

(i) Are not required to be bid by a county under the **County** Purchasing Law of 1983, Title 5, Chapter 14, Tennessee Code Annotated, as heretofore or hereafter amended; or

(ii) Are not required **to** be bid by a municipality under the Municipal Purchasing Law of 1983, Title 6, Chapter 56, Tennessee Code Annotated, as heretofore or hereafter amended; or

(iii) Are of a nature that are exempt or otherwise not required to be bid by any municipality or county under any other law of general application of this State.

(B) A Private Act Metropolitan Hospital Authority shall **not** be subject to provisions for the letting of public contracts that may be provided in the charter or governing law of a creating municipality.

Section 5.     Implied Powers.     Construction. In addition to all of the powers conferred upon it by this Act or any other law, a Private Act Metropolitan Hospital Authority may do any and all things necessary and convenient to carry out the powers expressly granted by this Act or any other law. The provisions of this Act shall be construed consistent with the provisions of Tennessee Code Annotated Section 7-57-107.

SECTION 6.   Severability. If any provision of this Act or the **application thereof** to any person or **circumstance is** held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect with the invalid provision or application, and to that end the provisions of this Act are declared to be severable.

SECTION 7.   Effective Date. This Act shall be effective upon **it becoming** a law, the public welfare requiring it.

AN ACT to amend Tennessee Code Annotated, Title 7, Chapter 57, to also grant certain powers heretofore granted hospital authorities created under the Metropolitan Hospital Authorities Act to hospital authorities which were heretofore created by Private Act of the General Assembly of Tennessee, and to establish other powers, authorizations, and privileges for the operation of hospital authorities covered by this Act, and to amend the statutory requirements under Title 8, Chapter 44, and Title 10, Chapter 7, Tennessee Code Annotated, with regard to the conducting of meetings and public inspection of documents of hospital authorities covered by this Act; and to amend the bidding requirements for certain hospital authorities covered by this Act.

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